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IN THE

# Supreme Court of the United States

OCTOBER TERM 1951

No. 416

STATE OF TEXAS,

*Petitioner,*

*against*

GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE 5% BONDS OF MISSOURI PACIFIC RAILROAD COMPANY, *et al.*,

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Dated: December 7, 1951.

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**Abbreviations Used in this Brief**

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| Commission: | Interstate Commerce Commission. |
| Court of Appeals: | United States Court of Appeals for the Eighth Circuit. |
| C.R.: | Transcript of Proceedings in Cause No. 14256 and Causes Nos. 14264-14274 in the United States Court of Appeals for the Eighth Circuit. (One volume) |
| D.R.: | Fourth Supplemental Report, dated August 2, 1949, and Fifth Supplemental Report and Order, both dated December 29, 1949, of the Commission approving the Plan of Reorganization of Missouri Pacific Railroad Company and affiliated debtors. (One volume) |
| District Court: | District Court of the United States, Eastern Judicial District of Missouri, Eastern Division. |
| Missouri Pacific: | Missouri Pacific Railroad Company, the principal debtor in these proceedings. |
| Plan: | The Plan of Reorganization approved by the Interstate Commerce Commission in its Supplemental Report and Order dated December 29, 1949 (D.R. 28640-28760). |
| R.: | The printed record on appeal filed in the United States Court of Appeals for the Eighth Circuit in Causes Nos. 14264-14274. (Two volumes) |
| 1941 R.: | The record on appeal filed in the United States Court of Appeals for the Eighth Circuit in appeals numbered 12130-12136, inclusive. (Four volumes) |

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| 1946 R.: | The record on appeal filed in the United States Court of Appeals for the Eighth Circuit in appeals numbered 13367 to 13369, both inclusive, and 13371 to 13373, both inclusive. (Three volumes) |
| Section 5: | Section 5 of the Interstate Commerce Act (49 U.S.C.A. 5). |
| Section 20a: | Section 20a of the Interstate Commerce Act (49 U.S.C.A. 20a). |
| Section 77: | Section 77 of the Bankruptcy Act (11 U.S.C.A. §205). |
| Texas: | The State of Texas. |

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STATE OF TEXAS,
*Petitioner,*

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GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE 5% BONDS OF MISSOURI PACIFIC RAILROAD COMPANY, ET AL.,

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

This brief is filed in opposition to the petition of the State of Texas for a writ of certiorari to review the judgment of the Court of Appeals for the Eighth Circuit affirming the order of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, approving the Plan.

### Opinions Below

Court of Appeals—*State of Texas* v. *Group of Institutional Investors Holding First and Refunding Mortgage 5% Bonds of Missouri Pacific Railroad Company, et al.*, 191 F. 2d 265 (8th Cir. 1951); (C. R. 14-36).

District Court—*In re Missouri Pacific R. Co.*, 93 F. Supp. 832 (E. D. Mo. 1950); (R. 915-945).

## Jurisdiction

Petitioner invokes the jurisdiction of this Court under Section 24(c) of the Bankruptcy Act (11 U.S.C.A. Sec. 47(c)) and Section 1254(1) of the Judicial Code (28 U.S.C.A. Sec. 1254(1)).

## POINT I

### The petition presents no important question of Federal law.

The Plan, as well as prior plans issued by the Commission in 1940 and 1944, provides for the consolidation into a single reorganized company of the Missouri Pacific Railroad Company and affiliated debtors,* including fourteen debtor companies organized under the laws of the State of Texas, and the Commission has found that a System reorganization "will result in economies of operation and is in the public interest and to the advantage of all the debtors" (D. R. 28548; see also, 1941 R., Vol. II, 393-401). The Court below and the District Court have concluded that these findings are supported by material and substantial evidence (C. R. 22-23; R. 941, 949). Texas concedes *arguendo* that the Commission's findings are so supported (Texas brief, pp. 19-20).

Petitioner asserts that the judgment of the Court of Appeals presents two important questions of Federal law (Texas petition, pp. 7-9). The first question is whether Section 77(f) authorizes the Commission or the District Court to vest in a foreign railroad corporation the right of

* Paragraph C of the Plan permits the Reorganization Managers to cause the properties of the International—Great Northern Railroad Company and its subsidiary, Austin Dam and Suburban Railroad Company, to be transferred to a separate corporation (D. R. 28693, 28618).

eminent domain over lands situated in Texas. The second is whether a plan under Section 77(b)(5) can authorize the transfer of rights of way of a Texas railroad corporation to a foreign railroad corporation. Texas contends that because of Texas law both questions require a negative answer.

It may be the law of Texas that upon consummation of the Plan the reorganized company will not have the right of eminent domain, and that the rights of way now enjoyed by the fourteen Texas debtors will revert to the State of Texas. However, none of the cases cited by petitioner so hold.* And even if the law of Texas is as petitioner asserts, the questions posed are not of such importance as to merit consideration by this Court.

**(a) A plan of reorganization may direct the transfer of all property rights (including rights of way) of a debtor corporation to the reorganized company regardless of contrary state laws.**

The contentions of Texas with respect to the transfer of the rights of way of the Texas debtors can be reduced to a single and simple issue—can the Constitution and the laws of the State of Texas frustrate the exercise of Federal power under the bankruptcy clause of the United States Constitution and under Section 77 of the Bankruptcy Act?

Section 77(b) provides in part:

> "A plan of reorganization within the meaning of this section * * * shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to

* See Point III, below.

another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, * * *".

Section 77(d) provides in part that the Commission "shall render a report and order in which it shall approve a plan, * * * that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; * * *". (11 U.S.C.A. §205(d)).

The Commission has found that the Plan, providing for a System consolidation, meets such requirements and will be compatible with the public interest (D. R. 28630). The Courts below have affirmed those findings (R. 941, 949; C. R. 22-23).

The Commission has consistently taken the position that it has the power under Section 77 to "put into effect and carry out" a plan of reorganization, "the laws of any state * * * to the contrary notwithstanding", and has maintained that the principles of the *Seaboard* case* apply with equal force to Sections 5 and 77 proceedings. This Court's decision in the *Seaboard* case is clear authority that, under the Supremacy Clause of the Constitution,** Congress may, by legislation in the field of interstate commerce, override such legislation, and that it has done so in Section 5 of the Interstate Commerce Act. See also, *Texas* v. *U. S.*, 292 U. S. 522 (1934); *Schwabacher* v. *U. S.*, 334 U. S. 182 (1948).

It appears to be equally clear that Congress, by legislation in the field of bankruptcy,*** may override state

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* *Seaboard Air Line Railroad Co.* v. *Daniel*, 333 U. S. 118 (1948).

** United States Constitution, Art. 1, Sec. 8, Clause 3.

*** United States Constitution, Art. 1, Sec. 8, Clause 4. Section 77 is within the power conferred by this clause. *Continental Illinois National Bank and Trust Co.* v. *Chicago, Rock Island and Pacific Ry. Co.*, 294 U. S. 648, 675 (1935).

constitutions and legislation and that Congress has done so in Section 77(f) wherein it provided, in part:

> "(f) * * * Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding."

In *Stellwagen* v. *Clum*, 245 U. S. 605, 613 (1918), this Court stated:

> "The Federal Constitution, Article I, §8, gives Congress the power to establish uniform laws on the subject of bankruptcy throughout the United States. In view of this grant of authority to the Congress it has been settled from an early date that state laws to the extent that they conflict with the laws of Congress, enacted under its constitutional authority, on the subject of bankruptcies are suspended * * *."

And in a recent case this Court, discussing the power of the Interstate Commerce Commission, in the exercise of its statutory obligations, to override state laws interposing obstacles in the path of otherwise lawful plans of reorganization, has stated:

> "We have recently reaffirmed that power in cases arising under the Interstate Commerce Act.* Nor is the ambit of federal power less broad in cases arising under the bankruptcy laws of the United

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* The court cited *Seaboard Air Line Railroad Co.* v. *Daniel*, *Schwabacher* v. *U. S.* and *Texas* v. *U. S.*, *supra.*

> States. Section 77(f) of the Bankruptcy Act specifically provides that the plan of reorganization shall be put into effect, 'the laws of any State or the decision or order of any State authority to the contrary notwithstanding' ". *Callaway* v. *Benton,* 336 U. S. 132, 141 (1949).

Texas attacked the power of the Commission to provide for a consolidation in conflict with Texas law in *In re Chicago, Rock Island and Pacific Railway Co.,* 168 F. 2d 587 (7th Cir. 1948). In that case the plan provided for consolidation of a Texas subsidiary (Chicago, Rock Island and Gulf Railway Company) into the reorganized Delaware company. The District Court's consummation decree directed transfer of the subsidiary's properties to the Delaware corporation. Texas contended, among other things, that the consummation decree violated Sections 3 and 8 of Article X of the Constitution of Texas and the statutes of that State, and that, in the absence of a finding that continuance of the separate existence of the Texas subsidiary would constitute an undue burden on interstate commerce, the District Court was without power to order consolidation of the Texas subsidiary into the reorganized Delaware company. *In re Chicago, Rock Island, Pacific Railway Co., supra,* at page 590; see also, page 4 of Texas petition for certiorari in *Texas* v. *Brown,* 335 U. S. 855 (1948). The objections of Texas were overruled both because of delay and on the merits. The Court of Appeals stated:

> "But even had the objections been presented at an opportune stage of the proceeding, nothing now urged would afford any basis for relief. So far as this record discloses, the plan had been formulated, approved and confirmed in full accord with the provisions of the pertinent Bankruptcy sections. The

court has authority to put into effect and carry out the plan approved and confirmed in proper manner, notwithstanding the laws of any state or the decision or order of any state to the contrary. The fact that the plan may infringe upon the provisions of the Texas constitution and laws is wholly immaterial against bankruptcy jurisdiction. In re N. Y., N. H. & H. R. Co., and 2 Cir. 1945, 147 F. 2d 40, 51, certiorari denied 325 U. S. 884, 65 S. Ct. 1577, 89 L. Ed. 1999; Texas *v.* U. S., 292 U. S. 522, 54 S. Ct. 819, 78 L. Ed. 1402; In re Missouri Pacific R. Co., D. C., 39 F. Supp. 436, 438; Seaboard Air Line R. Co. *v.* Daniel, supra. In other words, nothing now urged in respect to infringement of the laws of Texas would, at any time, have afforded the Commission any power to grant the relief the state is insisting it should have." *In re Chicago, Rock Island & Pacific Railway Company, supra,* at page 594.

Texas petitioned this Court for a writ of certiorari to review the *Rock Island* decision. Certiorari was denied *sub nom. Texas* v. *Brown, supra.*

In the *New Haven* reorganization the contention that a plan of reorganization must comply with State laws has been twice rejected by the Court of Appeals. *In re New York, New Haven and Hartford R. R. Co.,* 147 F. 2d 40 (2nd Cir. 1945), cert. den. 325 U. S. 884 (1945); *Commission of Department of Public Utilities of Mass.* v. *New York, New Haven and Hartford R. R. Co.,* 178 F. 2d 559 (2nd Cir. 1949). See also, *Palmer* v. *Massachusetts,* 308 U. S. 79 (1939).

In the *Rock Island* case the arguments of Texas were addressed to the comprehensive question of whether the general provisions of the Texas statutes and constitution prohibiting the ownership or operation of railroads in Texas by a foreign corporation and the consolidation of

a Texas railway company with a foreign company could be overridden by the provisions of a plan of reorganization in the absence of certain supporting findings of fact. In the present petition Texas questions only the Commission's incidental power to authorize the transfer of certain property rights of the Texas debtors, upon consummation of the Plan, to the reorganized company. Furthermore, in this petition, unlike its petition in the *Rock Island* case, Texas concedes *arguendo* that the Commission's findings are properly supported by the evidence. If the Texas petition for certiorari in the *Rock Island* case was insufficient to merit review by this Court, the judgment of the Court below certainly does not present any important Federal question for review.

**(b) Even if the reorganized company were denied the right of eminent domain under Texas law, the petition fails to demonstrate that the plan would thereby be rendered impracticable or defective.**

Texas asserts that the reorganized company, deprived of the power of eminent domain, "would be at a distinct disadvantage" in continuing its Texas operations in competition with other major railroad systems now operating in Texas, and that the Plan in this respect is impracticable and defective (Texas petition, p. 21). As pointed out below (Point III), Texas is unable to show that the Texas courts have held or will hold that a foreign corporation organized pursuant to a lawful plan of reorganization is deprived of the right of eminent domain in Texas. And even if the reorganized company were deprived of this right, Texas has failed to show that the Plan would thereby be rendered impracticable or that the operations of the reorganized company would be adversely affected. At least

two other major railroad systems organized under foreign law are operating substantial trackage in the State of Texas. The Kansas City Southern Railway Co., a Missouri corporation, has owned and operated Texas trackage since January 1, 1944, and the Chicago, Rock Island & Pacific Railway Co., a Delaware corporation, has operated its Texas properties since the consummation of its plan of reorganization on January 1, 1948. *Kansas City Southern Ry. Co.* v. *Daniel,* 180 F. 2d 910 (5th Cir., 1950); *In re Chicago, Rock Island & Pacific Railway Co., supra.*

## POINT II

### There is no conflict between the judgment of the Court of Appeals and the decisions of this Court.

Petitioner asserts that the holding of the Court below is in direct conflict with *Callaway* v. *Benton, supra, California* v. *Central Pacific Railway Co.,* 127 U. S. 1 (1888) and other decisions of this Court (Texas petition, p. 9).

In the *Callaway* case the plan of reorganization of the Central of Georgia Railway Co. provided in the alternative for acceptance by South Western Railway Company of an offer to purchase its properties (theretofore under lease to Central) or disaffirmance of the lease by Central. South Western was not in reorganization. The officers of South Western sought to accept the offer of purchase by majority vote of South Western's stockholders. The Georgia court enjoined the sale because of provisions of Georgia law requiring unanimous stockholder approval of a sale of assets. The District Court declared the state court's injunction null and void. The Court of Appeals reversed. On review this Court affirmed the judgment of the Court of Appeals holding that the controversy in

the state court "did not involve property of the debtor within the jurisdiction of the bankruptcy court, and the assertion of jurisdiction by the state court is not inconsistent with the provisions of the Bankruptcy Act." *Callaway* case, *supra*, page 151. This Court further stated:

> "The statute does not, however, give the Commission or court the right to require acceptance by a lessor not in reorganization of an offer for the purchase of its property, and no such power has been asserted by the Commission in this case. The plan of reorganization in effect hands South Western a contract of sale. Whether or not South Western signs the contract must depend not only upon its business judgment, but also upon the charter of the company and the laws of the state of its incorporation. There is therefore no occasion to override state law. The plan implicitly accepts it as controlling." *Callaway* case, *supra*, page 141.

Texas fails to demonstrate how the *Callaway* decision can possibly conflict with the decision of the Court below. In its petition Texas underscores this Court's language in the *Callaway* case to the effect that the Commission's power to provide for mergers under Section 77 "flows from a different source than the power over consolidations under the Interstate Commerce Act". (Texas petition, p. 9). In the *Callaway* case this Court made it clear that the "ambit of federal power" is as broad under Section 77 as it is under Section 5. (See *supra*, pp. 5-6.)

To demonstrate the asserted conflict between the decision of the Court below and *California* v. *Central Pacific Railway Co.*, *supra*, petitioner apparently relies on this Court's statement in the *Central Pacific* case that "the right of eminent domain can only be exercised by virtue of a legislative grant". *Central Pacific Rail-*

*way Co.* case, *supra*, at page 40 (Texas petition, p. 10). There is no statement in the decision below which conflicts with this proposition. Indeed there is no statement in the Plan or any of the decisions below which purports to deal with eminent domain.

Petitioner states that the power of eminent domain is granted to the Commission in Section 5(11) of the Interstate Commerce Act and that this Court so held in the *Seaboard* case, *supra* (Texas petition, pp. 10 and 11). Petitioner argues that there is no grant of such power in Section 77. The *Seaboard* case and Section 5(11) may be searched in vain for any mention of "eminent domain".

## POINT III

**Until the courts of Texas have ruled on the questions raised by the petitioner they should not be reviewed by this Court.**

None of the cases cited by petitioner purports to deal with the questions sought to be raised by petitioner. The Texas cases cited at page 19 of the Texas brief* declare merely that a railroad corporation "legally incorporated under the law"** may avail itself of the right of eminent domain. Neither case involved any Federal question. Likewise, neither the *Evansville* nor the *St. Louis and S. F. R. Co.* case cited at page 18 of the Texas brief involves any attempt by a foreign corporation acting

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* *Texas & New Orleans R. Co.* v. *Schoenfeld*, 136 Tex. 173; 146 S. W. 2d 724 (1941); *Fort Worth & D. C. Ry. Co.* v. *Ammons*, 215 S. W. 2d 407 (Tex. Civ. App. 1948, error ref.).

** Presumably the law of Texas, although the opinions do not specify.

under Federal legislation implementing the Bankruptcy or Commerce Clauses of the Constitution to exercise the right of eminent domain. The case of *Western Union Telegraph Co.* v. *Pennsylvania R. R. Co.* also cited at page 18 of the Texas brief is not apposite. In that case the Telegraph Company sought to erect telegraph lines on the right of way of the Railroad Company, claiming it had the right to do so by virtue of the power of eminent domain under the Act of 1866. The holding in the case was that the statute merely granted to telegraph companies the right to construct and operate telegraph lines through, along and over the public domain, military or post roads and navigable waters of the United States and did not purport expressly or by implication to grant the right of eminent domain with respect to private property. The rights of way of railroad corporations were held to be private property. Nor is a single case cited by petitioner holding that rights of way of a Texas railroad corporation revert to the State upon the consummation of a plan of reorganization.

In short the courts of Texas have not, so far as the petition shows, ever determined that the right of eminent domain shall be denied to a foreign railroad corporation, organized pursuant to an otherwise lawful plan of reorganization under Section 77, or that upon merger with a foreign corporation under such a plan the rights of way of a Texas railroad will revert to the State or to former owners. The mere arguments of the Attorney General in the petition and brief do not dispose of these questions nor create an obstacle to the execution of the Plan. Unless and until the Texas courts deal with these questions and reach a result in conflict with the Federal power, they will not merit consideration by this Court.

## CONCLUSION

**The petition should be denied.**

Respectfully submitted,

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Dated: December 7, 1951.